

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
2           NORTHERN DIVISION

3

4     CHRISTOPHER C. LUKE                                  PLAINTIFF

5     VS.    CIVIL ACTION NO.:  
6    3:14cv240 DPJ-FKB

7     NESHoba COUNTY, MISSISSIPPI;                                  DEFENDANTS  
8     SHERIFF TOMMY G. WADDELL, Individually  
9     and in His Official Capacity;  
10    JIMMY REID, NESHoba COUNTY JAIL  
11    ADMINISTRATOR, Individually and in  
12    His Official Capacity; NICK WALKER,  
13    JAILED, Individually and in His  
14    Official Capacity; HARVEY HICKMAN,  
15    JAILED, Individually and in His  
16    Official Capacity; BILLY GUESS, JAILED,  
17    Individually and in His Official Capacity;  
18    JOSH BURT, DEPUTY, Individually and in His  
19    Official Capacity; KEN SPEARS, CONSTABLE,  
20    Individually and in His Official Capacity;  
21    ANGEL CROCKETT, CORRECTIONS SUPERVISOR,  
22    Individually and in Her Official Capacity;  
23    and JOHN AND JANE DOES ONE THROUGH SIX

24

25    \*\*\*\*\*  
26    DEPOSITION OF MICKEY WALLACE, M.D.  
27    \*\*\*\*\*

28    Taken at Ear, Nose & Throat Surgical Group  
29    970 Lakeland Drive, Suite 40,  
30    Jackson, Mississippi,  
31    on Friday, December 19, 2014,  
32    beginning at approximately 10:47 a.m.

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35    AMY M. KEY, RPR, CSR  
36    Notary Public

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EXHIBIT "M"

<p style="text-align: right;">Page 22</p> <p>1 directly resulted in his hearing loss that we're 2 discussing today?</p> <p>3 MR. SMITH: Object to the form.</p> <p>4 Leading.</p> <p>5 THE WITNESS: I do have that opinion, 6 that that is the cause of his hearing loss.</p> <p>7 BY MR. WALLER:</p> <p>8 Q. I wanted to ask you this. There was 9 some -- he was injured on the 28th and taken to 10 Neshoba ER on the 30th and transferred to Jeff 11 Anderson on the same day.</p> <p>12 The delay in treatment of two days, did 13 that have any impact on his permanent hearing loss 14 or his hearing loss?</p> <p>15 MR. SMITH: Object to the form.</p> <p>16 THE WITNESS: Probably not.</p> <p>17 BY MR. WALLER:</p> <p>18 Q. Once it was done --</p> <p>19 A. Once it was done, it was probably done.</p> <p>20 Q. So the timing of the treatment did not 21 have an impact on his level of hearing loss?</p> <p>22 A. No. If he tore the hearing nerve, it's 23 torn.</p> <p>24 Q. And his hearing loss in both ears is nerve 25 related?</p>	<p style="text-align: right;">Page 24</p> <p>1 at that point?</p> <p>2 A. I would be more comfortable to see him 60 3 days after that to say that.</p> <p>4 Q. To retest him and see if he had any 5 improvement in his right ear?</p> <p>6 A. Yes. It's likely he did not. But the 7 right thing to do would be to have another test.</p> <p>8 And that one, the left one, there's probably less 9 than a one percent chance it could change, highly 10 unlikely, but the right one should be -- he would 11 need another one to go by.</p> <p>12 Q. With his type of hearing loss, do you 13 think that would -- do you have an opinion whether 14 or not that would affect his employment, his ability 15 to gain employment?</p> <p>16 MR. SMITH: Object to the form.</p> <p>17 THE WITNESS: In my experience of doing 18 this over 30 years, people that have 19 reasonably normal hearing in one ear are as 20 equally employable as someone that has both 21 ears. As long as one ear is functioning, 22 they're employable as anyone else.</p> <p>23 BY MR. WALLER:</p> <p>24 Q. And it's your opinion that if he had the 25 hearing aid he would have reasonably normal hearing</p>
<p style="text-align: right;">Page 23</p> <p>1 A. Yes.</p> <p>2 Q. Do you expect his hearing in his right ear 3 to stabilize or deteriorate over time?</p> <p>4 MR. SMITH: Object to the form. Calls 5 for speculation.</p> <p>6 BY MR. WALLER:</p> <p>7 Q. If you can give that opinion.</p> <p>8 A. I would say it's fairly acutely traumatic, 9 so there was probably a 30 percent chance that it 10 could have improved over the next couple of months. 11 After that and then at that point, it would be 12 fairly stable. It would probably reach maximum 13 improvement within the next 60 days after that 14 trauma. And other than the normal wear and tear of 15 age-related changes, it would be subject to just 16 normal age-related deterioration.</p> <p>17 Q. So you're talking about a healing period 18 of what, five to six months or?</p> <p>19 A. Anything over 30 to 60 days is going to do 20 what it's going to do, and then it's just going to 21 be normal age-related and noise-trauma related 22 changes.</p> <p>23 Q. The August 1st hearing test was 24 approximately 60 days after the injury. So are you 25 confident he had improved as much as he would have</p>	<p style="text-align: right;">Page 25</p> <p>1 in that one ear?</p> <p>2 A. Based on the information that I have at 3 this time, yes.</p> <p>4 Q. Did you give a percentage in your letter 5 to the amount of hearing loss? I think you say --</p> <p>6 A. That's a quagmire to try to give a 7 percentage, because there's, you know, the eyeball 8 test, what the hearing is to the test, and then 9 there's the voc-rehab formula which has nothing 10 really to do with that, so that's a hard -- that's 11 sort of an opinion. Because if you do much of the 12 vocational rehabilitation formula, my opinion of 13 that is that it's not really a great, valid formula, 14 but that's the one that's used. So to give a 15 percentage of hearing loss is somewhat of an 16 opinion.</p> <p>17 Q. Well, can you give your opinion?</p> <p>18 A. Having said that, looking at this form, 19 this 20 here, that's speech reception threshold. 20 That's how loud did they turn it up so that the 21 person can hear speech. That's sort of like 22 20 percent. And then this number over here, 80, is 23 where they read a two syllable word list of 20 24 words. And that 80 means he got 80 percent of the 25 words right on that test turning it up 20 decibels.</p>

<p style="text-align: right;">Page 26</p> <p>1 That is very functional hearing.</p> <p>2 So it's difficult to give -- based on that</p> <p>3 test, it's hard to give a legal documentation of</p> <p>4 what percentage of hearing loss he has. Part of</p> <p>5 that reason is that ear on this test, his</p> <p>6 frequencies are really low and some low frequencies</p> <p>7 which are not very important for conversation. In</p> <p>8 the middle range on this test, he hears pretty well,</p> <p>9 which is a lot of conversation. And down here in</p> <p>10 the high frequencies, that's more environmental</p> <p>11 sounds. So it's hard to give a percentage that you</p> <p>12 could swear somebody wouldn't argue with.</p> <p>13 And if you use the voc-rehab numbers, they</p> <p>14 only use the test at 500, 1,000 and 2,000 Hertz, for</p> <p>15 the most part, when giving a percentage of hearing</p> <p>16 loss. In my personal opinion, that's not a good</p> <p>17 formula, but that's the one I used.</p> <p>18 Q. So your opinion is he has 100 percent in</p> <p>19 his left ear, and you don't have an opinion that</p> <p>20 would give a percent of loss in the right ear?</p> <p>21 A. I have an opinion but I don't have one</p> <p>22 that I would be -- that you could --</p> <p>23 Q. Well, just give us your opinion, for what</p> <p>24 it's worth.</p> <p>25 A. Based on that, I mean, he's got a</p>	<p style="text-align: right;">Page 28</p> <p>1 opinion about that.</p> <p>2 Q. Well, what is your prognosis for the right</p> <p>3 ear? Under normal living conditions, will it</p> <p>4 continue to deteriorate?</p> <p>5 A. I wouldn't give you one based on a test</p> <p>6 that's 18 months old.</p> <p>7 Q. You would need to test him again is what</p> <p>8 you're saying?</p> <p>9 A. Someone would. The ultimate -- I mean</p> <p>10 probably someone like Jim House, James House, is the</p> <p>11 neuro-otologist here. He's sort of the gold</p> <p>12 standard for that. He would be the best follow-up</p> <p>13 for that.</p> <p>14 Q. Is there any pain associated with this</p> <p>15 hearing loss?</p> <p>16 A. Or either Dr. Eby at University.</p> <p>17 Q. Yeah.</p> <p>18 A. No.</p> <p>19 Q. Any headaches or any --</p> <p>20 A. There's not pain or headaches associated</p> <p>21 with this hearing issue.</p> <p>22 Q. And you didn't test him for ringing or</p> <p>23 anything like that, did you? Tinnitus or the</p> <p>24 ringing in the ears, he didn't complain of that?</p> <p>25 A. That's not a measurable quantity anyway.</p>
<p style="text-align: right;">Page 27</p> <p>1 30 percent hearing loss in that left ear, I would</p> <p>2 just say, from my experience.</p> <p>3 Q. You mean in his right ear?</p> <p>4 A. In the right ear. But there's a lot of</p> <p>5 different ways to figure that. That's just a --</p> <p>6 Q. A guesstimate, if you will?</p> <p>7 A. That's just a guesstimate of having done</p> <p>8 this 30-plus years.</p> <p>9 Q. Okay.</p> <p>10 A. And I say that about the voc-rehab because</p> <p>11 we did over 200 employees in a plant one time</p> <p>12 looking for those issues, and then I tested about</p> <p>13 150 of those firemen that did all that, had the</p> <p>14 lawsuit for that. So I'm real familiar with that</p> <p>15 voc-rehab formula. What the voc-rehab formula says</p> <p>16 and what people really function is not, in my</p> <p>17 opinion, accurate. That voc-rehab does not take</p> <p>18 into account, you know, everything.</p> <p>19 Q. You would have a higher --</p> <p>20 A. I've done a lot of that.</p> <p>21 Q. You would have a higher percentage of loss</p> <p>22 in the voc-rehab formula?</p> <p>23 A. Yes. Ear loss based on the voc-rehab</p> <p>24 formula is not a real accurate or a real life</p> <p>25 function. Having done over 350 of those, I have an</p>	<p style="text-align: right;">Page 29</p> <p>1 That's a subjective -- that's a fairly subjective</p> <p>2 complaint.</p> <p>3 Q. He didn't complain about --</p> <p>4 A. I'm sure he did. I mean, it would be</p> <p>5 unusual to not have that.</p> <p>6 Q. Would the ringing be in the left ear or</p> <p>7 the right ear?</p> <p>8 A. Basically, the damage in the left ear</p> <p>9 would usually be short limited. Usually within 60</p> <p>10 days most of that would probably resolve. There</p> <p>11 wouldn't be any noise over there, but with the right</p> <p>12 ear he probably would have some residual tinnitus.</p> <p>13 Q. Does that tinnitus get worse with time</p> <p>14 typically?</p> <p>15 A. 90 percent of people that have that it</p> <p>16 gets worse with time gradually. But it's associated</p> <p>17 with the degree of deterioration of hearing at the</p> <p>18 high frequencies just associated with accumulation</p> <p>19 of birthdays and noise exposure.</p> <p>20 Q. Does it affect his balance, the hearing</p> <p>21 loss?</p> <p>22 A. With a temporal bone fracture, such as in</p> <p>23 the left ear, those people are usually intensely</p> <p>24 dizzy for 20 to 30 days and that resolves with a</p> <p>25 fracture. They usually have a lot of dizziness the</p>

<p style="text-align: right;">Page 30</p> <p>1 first 20 to 30 days and then that resolves itself.      2 That trauma of the right ear, that's just      3 a percentage. You know, maybe 30 percent of people      4 would have some imbalance over there and two-thirds      5 of them may have none, so that's unpredictable.      6 MR. WALLER: That's all the questions I      7 have.      8 MR. SMITH: Dr. Wallace, I've got just a      9 few follow-up, not very many.</p> <p style="text-align: center;">EXAMINATION</p> <p>10 BY MR. SMITH:</p> <p>11 Q. Just to make a point on a few things, the      12 first time you saw him was July of 2013?</p> <p>13 A. Right.</p> <p>14 Q. And the last time -- you only saw him one      15 other time, and that was August 1st, 2013?</p> <p>16 A. According to my records and my memory.</p> <p>17 Q. And you did not have any prior hearing      18 tests to compare to what you observed on that date?</p> <p>19 A. No.</p> <p>20 Q. On the left ear, you said that was caused      21 by a temporal joint fracture?</p> <p>22 A. Yes.</p> <p>23 Q. Where is that in the head?</p> <p>24 A. It's from about the hole -- the hole in</p>	<p style="text-align: right;">Page 32</p> <p>1 behind the ear, and that's indicative of significant      2 trauma to the temporal bone on that side. It's a      3 bruise in that area.      4 Q. Let me ask you to look in your records,      5 and this is on the 8/1/2013 visit. You were asked      6 some questions about tinnitus. Looking down here on      7 review of symptoms, on ears, it says, "Hearing loss,      8 no tinnitus." So he didn't have tinnitus?      9 A. Well, it's not documented there, but      10 whoever pushed -- you know, the medical records is      11 kind of whoever pushed that particular button. I      12 don't know if that came from a form that he filled      13 out and the nurse transferred it to that or they      14 just failed to mention it.      15 Q. Well, are you saying -- I mean, I don't      16 see anywhere in any record that he had tinnitus on      17 either visit. You were asked a question and you      18 said it's possible. And I'm just saying that based      19 on your records there was no recording of tinnitus.      20 A. There was no documentation of it.      21 Q. All right. As far as the questions he was      22 asking you about balance, you were giving opinions      23 about people generally. You didn't have any -- he      24 didn't ever complain to you about problems with      25 balance in either of these two visits, did he?</p>
<p style="text-align: right;">Page 31</p> <p>1 the ear runs right through the middle of it and it      2 goes maybe seven centimeters up into your skull.      3 The base of your skull is where it is.      4 Q. And as far as the facts of having the      5 trauma he had or whether he got hit by another      6 inmate or what, you don't have any personal      7 knowledge of that? Anything you would know would be      8 what you were told by him or the parents?      9 A. That's correct.      10 Q. And then the right ear -- well, in the      11 left ear the hearing loss is caused by the nerve or      12 the cochlear being damaged and that happened      13 immediately?      14 A. Correct.      15 Q. And then the same for the right side, that      16 was -- what was the cause of the right ear hearing      17 loss, if you know?      18 A. Trauma to the inner ear and the brain      19 around that temporal bone area.      20 Q. And if you have a blow to the right side      21 of your head, would that be consistent with that      22 type of a hearing loss?      23 A. Yes. Based on his records, they said he      24 had what we call a Battle's sign, B-A-T-T-L-E's, in      25 the right postauricular area, which is the area</p>	<p style="text-align: right;">Page 33</p> <p>1 A. Not that I recall. In fact, on 7/17 we      2 did say he had tinnitus on that one.      3 Q. And he didn't have it on the next visit?      4 A. It wasn't noted on that one.      5 Q. You were asked an opinion about a hearing      6 loss percentage and you reluctantly gave it because      7 it's a moving -- I mean, it depends on a lot of      8 factors?      9 A. Yeah.      10 Q. But with a hearing aid you said that you      11 would expect that he would have reasonably normal      12 hearing in the right ear?      13 A. Based on --      14 Q. Based on your testing of him back in --      15 A. Based on that, yes.      16 Q. With a hearing aid, his hearing loss in      17 the right ear, even though he has it, the hearing      18 aid makes up for a lot of that hearing loss. That's      19 the purpose of a hearing aid, correct?      20 A. Correct.      21 Q. If someone is on some type of drugs, do      22 any drugs cause hearing loss?      23 A. There's not a lot of hearing loss      24 associated with recreational use of drugs.      25 Chemotherapy and cancer drugs are bad to cause it.</p>

Page 34

1 But as far as recreational drugs, there's not a  
 2 pattern of that.

3 MR. SMITH: That's all I have,  
 4 Dr. Wallace. Thank you.

5 MR. WALLER: I don't have any further  
 6 questions.

7 (EXHIBIT NO. 5 MARKED.)  
 8 (CONCLUDED AT 11:36 A.M.)

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1 CERTIFICATE OF COURT REPORTER

2 I, Amy M. Key, CSR, and Notary Public in  
 3 and for the County of Lamar, State of Mississippi,  
 4 hereby certify that the foregoing pages, under  
 5 penalty of perjury, contain a true and correct  
 6 transcript of the testimony of the witness, as  
 7 taken by me at the time and place heretofore  
 8 stated, and later reduced to typewritten form by  
 9 computer-aided transcription under my supervision  
 10 and to the best of my skill and ability.

11 I further certify that I placed the witness  
 12 under oath to truthfully answer the questions in  
 13 this matter under the power vested in me by the  
 14 State of Mississippi.

15 I further certify that I am not in the employ  
 16 of or related to any counsel or party in this  
 17 matter, and have no interest, monetary or  
 18 otherwise, in the final outcome of the  
 19 proceedings.

20 Witness my signature and seal this the 7th  
 21 day of January, 2015.

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 AMY M. KEY, CSR  
 My Commission Expires June 19, 2016